

United States District Court

EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA

vs.

EDWARD MICHAEL MCDERMOTT

§
§
§
§
§

Case No. 4:03cr78
(Judge Brown)

REPORT AND RECOMMENDATION **OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on January 24, 2005 to determine whether the Defendant violated his supervised release. The Defendant was represented by John King. The Government was represented by Tracey Batson.

On April 16, 2004, the Defendant was sentenced by the Honorable Paul Brown to 6 months custody followed by a 2-year term of supervised release for the offense of Acquisition of a Firearm by False Statement, a Class C Felony. On June 30, 2004, the Defendant completed his period of imprisonment and began service of his supervised term.

On January 3, 2004, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender Under Supervision. The petition asserted that the Defendant violated the following conditions: (1) The Defendant shall refrain from any unlawful use of a controlled substance; (2) The Defendant shall refrain from

excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or paraphernalia related to such substances, except as prescribed by a physician; (3) The Defendant shall pay a fine in the amount of \$4000.00; and (4) The Defendant shall participate in a program of testing and treatment for alcohol and/or drug abuse under the guidance and direction of the U.S. Probation Office until such time as Defendant is released from the program by the probation officer.

The petition alleges that the Defendant committed the following acts: (1) On November 2, 2004, Defendant submitted a positive urine specimen for cocaine and marijuana; (2) Defendant has failed to make a payment toward the fine and has an outstanding balance of \$4000.00; and (3) Defendant failed to report for random urine specimen collection on October 27, October 28, November 8, November 12, November 17, and December 9, 2004.

Prior to the Government putting on its case, the Defendant entered a plea of true to all of the above listed violations. At the hearing, the Court recommended that the Defendant's supervised release be revoked.

RECOMMENDATION

The Court recommends that the District Court revoke the Defendant's supervised release. Pursuant to the Sentencing Reform Act of 1984, the Court recommends that the Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of seven (7) months with twenty-nine (29)

months of supervised release to follow.

Within ten (10) days after receipt of the magistrate judge's report, any party may serve and file written objections to the findings and recommendations of the magistrate judge. 28 U.S.C.A. § 636(b)(1)(C).

Failure to file written objections to the proposed findings and recommendations contained in this report within ten days after service shall bar an aggrieved party from *de novo* review by the district court of the proposed findings and recommendations and from appellate review of factual findings accepted or adopted by the district court except on grounds of plain error or manifest injustice. *Thomas v. Arn*, 474 U.S. 140, 148 (1985); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).

SIGNED this 28th day of January, 2005.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE